

Region 6 Guidance and Procedures for Implementing EPA's SEP Policy (Region 6 SEP Guidance)

A. Background:

A Supplemental Environmental Project (SEP) is an enforcement settlement option, whereby a defendant/respondent agrees to perform an environmentally beneficial project that is not otherwise required by law. In consideration of a defendant's/respondent's willingness to perform a SEP, EPA may mitigate the civil penalty to be assessed. (See EPA Supplemental Environmental Projects Policy,

<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>)

EPA Region 6 encourages the use of SEPs in order to advance EPA's goals of protecting and enhancing public health in the communities and in the environment affected by environmental violations. These goals are shared with the State environmental agencies that are, for the most part, authorized to administer the Federal environmental programs in Region 6.

- Arkansas Department of Environmental Quality – <http://www.adeq.state.ar.us/legal/sep.htm>
- Louisiana Department of Environmental Quality – <http://www.deq.louisiana.gov/portal/tabid/2206/Default.aspx>
- New Mexico Environmental Department - www.nmenv.state.nm.us/abq
- Oklahoma Department of Environmental Quality – www.odeq.state.ok.us
- Texas Commission on Environmental Quality – www.tceq.state.tx.us/

This document provides guidance policy and information on SEP approval procedures and procedures to assist Region 6 enforcement personnel in maximizing the use of SEPs in enforcement settlements for the benefit of the affected communities, the environment, and the regulated community.

In general, Region 6 personnel will promote the SEP option in all civil (administrative and judicial) enforcement settlements involving penalties, where appropriate. SEPs are not mandatory for regulated parties and there are instances where their use is inappropriate.

B. Applicability:

This Regional guidance applies to all civil judicial and administrative enforcement in Region 6 or in which Region 6 participates. Stipulated penalties for violations of enforcement settlement agreements and consent decrees may not be mitigated by SEPs.

This is settlement guidance and is not intended for use at a hearing or in a trial. Although SEPs are a preferred settlement option, EPA Region 6 has the discretion to reject that option if the regulated party cannot propose a SEP which meets the terms of EPA's SEP Policy or if the Region determines that the SEP does not meet EPA goals (e.g., SEP oversight costs outweigh benefits).

C. Guidelines:

SEPs must have the following 4 characteristics:

1. They must provide a clear **environmental benefit** by improving, protecting, or reducing the risks to public health or the environment. Therefore, to the extent practicable the project should be designed with measurable environmental outcomes (e.g., % reduction in VOC emissions).
2. They must be **in settlement of an enforcement action** where EPA has the opportunity to influence the project from the outset (i.e., before it is implemented).
3. SEPs must go beyond compliance. They are **not otherwise legally required** to be performed under any Federal, State, or local law, regulation, or requirement.
4. They must have a **nexus to the violation**. In this, they advance the statutory objectives underlying the enforcement action. The nexus requirement is met if the SEP meets any one of the elements below:
 - It reduces the likelihood that similar violations will occur, or
 - It reduces the adverse impact to public health or the environment associated with the violation, or
 - It reduces the risk to public health or the environment impacted by the violation.

SEPs must be memorialized such that the “who, what, when, and where” of the project is clearly articulated in the enforcement settlement document.

SEPs should fall into one or more of the following categories. The Region 6 SEP Library has examples of each.

- **Public Health**
The project provides diagnostic, preventative and/or remedial components of health care related to the violation.
- **Pollution Prevention**
The project reduces the generation of pollution through source reduction (i.e., reduces the amount of pollutants before they enter a waste stream or are released to the environment). Pollution prevention can also include “in-process recycling” where the pollutant is returned directly to the production process as a raw material on-site. A project that protects or conserves natural resources or is energy efficient can be pollution prevention.

- **Pollution Reduction**
The project results in the reduction in the amount or toxicity of pollutants entering the waste stream or the environment. It also includes “out-of-process recycling” where the pollutant is recycled as raw materials for production off-site.
- **Environmental Restoration and Protection**
The project enhances the ecosystem or immediate geographic area affected by the violation.
- **Pollution Prevention, Environmental Quality, or Compliance Assessments and Audits**
Pollution prevention assessment projects involve systematic internal reviews of specific processes to identify pollution prevention opportunities.
Environmental quality assessment projects involve investigations of the actual or potential impacts to human health and/or environment related to the violation.
Compliance audits projects can be approved as SEPs for small businesses or small communities. Such projects consist of independent (third party) environmental compliance evaluations.
- **Emergency Planning and Preparedness**
The Project provides assistance to a responsible State or local emergency response or planning entity to help it meet its obligations under the Emergency Planning and Community Right-to-Know Act.
- **Environmental Compliance Promotion**
The project provides qualified training or technical support to other regulated entities to assist them in their compliance efforts. (See special approval requirements in Documentation Section below)
- **Other**
The “Other” category includes Environmental Management Systems (EMS) and projects that would not fall neatly into one of the above categories, but would be consistent with the SEP Policy and this guidance and have clear environmental merit. (See special approval requirements in Documentation Section below.)

The following are **not acceptable** for SEP projects in EPA enforcement settlements:

- General public education projects
- Projects that are already required to be performed
- Donations, including contributions to environmental research at colleges/universities
- Projects funded by federal loans or grants

- Projects that do not exhibit environmental or human health benefits
- Projects in which EPA has a role in managing or controlling funds used to perform a SEP.

D. Community Involvement:

Community involvement in the SEP process is highly desirable. It can advance environmental justice, empower and inform, and improve relationships. EPA's SEP Policy and Region 6 promote the active inclusion of communities by encouraging parties to EPA enforcement actions to solicit community input into SEP projects. This may result in favorable consideration in the SEP valuation process.

Community involvement may not be appropriate or possible in all settlements. While protecting the necessary level of government/respondent or defendant confidentiality and the integrity of confidential business information, the Region will solicit community input through the Region 6 SEP Library and/or by direct communication with members of the affected community. The Region will consult and coordinate with the applicable State agency in order to promote community involvement.

E. State Coordination:

The authorization/delegation and enforcement agreements EPA Region 6 has with applicable State agencies describe the coordination associated with EPA compliance and enforcement activities. Coordination includes strategic planning, consultations and notifications. Here the Region will solicit State input into SEP projects to support State efforts in protecting communities and the environment.

F. SEP Valuation:

In order to determine how much of the penalty can be mitigated by a SEP, the proposed SEP project must go through a valuation process. It begins by determining the net present after-tax cost of the SEP (SEP COST). It is calculated using the PROJECT computer program developed by EPA. The PROJECT User's Manual (January 1995) provides detailed instructions on its use. PROJECT can be viewed on-line at www.epa.gov/compliance/civil/econmodels. The figure that results from a PROJECT run is a reasonable estimate of the net present after-tax cost of the proposed SEP. This figure represents the "value" of a SEP, and it is to this figure that the mitigation percentage should be applied. A negative PROJECT result indicates that the proposed SEP will be profitable to the violator.

Generally, a SEP project should not become profitable within 15 years of its inception. However, in some cases the benefits to the affected community and the environment justify accepting projects that are expected to become profitable sooner. Below are guidelines for acceptance of such a project.

- The project must exhibit compelling and in most cases measurable benefits to the affected community and/or the environment.

- Except for a project proposed by small businesses and small communities, an acceptable project may not become profitable within 5 years of its inception. For small businesses and small communities, the project may become profitable after 3 years.

In addition to the above, favorable consideration with respect to profitability will be given to SEP projects that demonstrate attributes such as:

- innovation with the prospect of broad application;
- technology application that can and will be shared with other entities; and/or
- economic risk.

Additional help in evaluating SEPs with respect to profitability can be found in EPA's Guidance for Determining Whether a Project is Profitable at

<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>

In calculating the SEP COST, the regulated party should indicate whether it intends to claim tax deductions for SEP expenditures. This will be taken into account when determining the SEP COST. The EPA's PROJECT model assumes that the regulated party will claim deductions for SEP expenditures and automatically fills in that flag on the data entry screen. However, if the regulated party is willing to certify in the settlement that it will not claim a tax deduction, the deductibility flag can be manually changed to reflect that the SEP costs will not be deducted. The regulated party should advise EPA as to their intentions in this respect. It is not within EPA's authority to determine the deductibility of SEP costs. This is the responsibility of the Internal Revenue Service. In addition, it is inappropriate for EPA to give tax advice. Regulated parties should consult with their tax advisors if they have questions.

With the SEP COST calculated, the next step is to determine the penalty mitigation percentage.

Generally, the maximum mitigation percentage that can be applied to a SEP is 80%. This percentage depends upon the degree to which the proposed SEP project exhibits one or more of the qualities below.

- Benefits to the Public or Environment – The best projects will have significant and measurable outcomes in terms of reductions of pollutants, reductions of risk to the public, and/or progress in protecting and restoring ecosystems.
- Innovativeness – The project furthers the development of innovative technology, process, or practice that more effectively reduces pollution, conserves natural resources, enhances ecosystems, or improves compliance.
- Environmental Justice – The project mitigates damage or risk to minority or low income populations that have been disproportionately exposed to pollution or are at environmental risk.
- Community Input – The party to the enforcement action actively solicits the input of the affected community. The best projects will reflect consideration of the input received from the affected community.
- Pollution Prevention – The project implements measurable pollution prevention processes or practices. Dollar for dollar SEP mitigation of a penalty is possible through an outstanding pollution prevention project.

- Multimedia Impacts – This factor can be optimized depending upon the number of environmental media to which any of the above qualities apply.

EPA Region 6 encourages SEP projects that align with national, regional, and state priorities (e.g., Nitrous Oxide reductions in non-attainment areas, toxics reductions in Environmental Justice areas). Small businesses, non-profit organizations, and governmental entities may receive up to 100% mitigation credit for a SEP of outstanding quality.

The final step in the SEP valuation process is to apply the mitigation percentage to the SEP COST and calculate the SEP mitigation amount as follows:

$$(\text{SEP COST}) \times (\text{mitigation percentage}) = \text{SEP mitigation amount}$$

EPA's SEP Policy requires that every settlement that includes a SEP must also include a minimum penalty. Using the minimum penalty worksheet shown in Appendix 1, the minimum penalty can be determined in 5 steps:

1. Calculate the penalty amount without a SEP using the applicable EPA penalty policy (e.g., RCRA Penalty Policy for RCRA violations). All the EPA penalty policies can be viewed at <http://www.epa.gov/compliance/resources/policies/index.html>. Each EPA penalty consists of an economic benefit component, a gravity component and appropriate adjustments.
2. Determine the minimum penalty constraints. The minimum cash penalty must equal or exceed the following:
 - the economic benefit component plus 10% of the gravity component; or 25% of the gravity component, whichever is greater; or
 - for Clean Water Act (CWA) settlements with municipalities only: 60% of the penalty as determined using the National Municipal Litigation Consideration (NMLC) tables included in the February 28, 1995 Revised Interim Clean Water Act Settlement Penalty Policy (CWA Policy). If the NMLC tables are not used, then the SEP Policy minimum penalty requirements apply.

A settlement that does not meet the SEP Policy's minimum penalty requirement must receive a waiver from the Assistant Administrator, OECA, prior to the settlement being finalized. Similarly, in settlements where the NMLC tables have been used, a waiver from the Assistant Administrator, OECA, is required if the settlement that includes a SEP does not meet the CWA Policy minimum penalty requirement.

3. Calculate the SEP COST using the PROJECT model.
4. Using the SEP valuation process, calculate the SEP mitigation amount.

5. Compare: the penalty (step 1) minus the SEP mitigation amount (step 4), with the minimum penalty constraints (step2). The greater amount is the minimum cash penalty.

G. Documentation:

Prior to sending the enforcement settlement documents to the regulated party for signature:

1. Documentation of necessary approvals:

Approval authority for SEPs that are consistent with the EPA SEP Policy is delegated to the Division Director. For purposes of documenting consistency, two memos will be generated as follows:

- The enforcement officer and attorney (negotiation team) sign a joint SEP memo to the Deputy Regional Counsel for Enforcement explaining the SEP and how it meets the EPA SEP Policy. (see Appendix 2 – Example: Negotiation Team SEP Memo)
- The Deputy Regional Counsel prepares a SEP approval memo for the Regional Counsel's signature. Once signed, the Regional Counsel approval memo is returned to the originating enforcement program to be filed in the enforcement file. (see Appendix 3 – Example: Regional Counsel SEP Approval Memo)

Special approval is required in the following situations:

- Where the SEP will also be implemented in other EPA Regions, the approval of the applicable Regional Director is required.
- If the SEP does not fully comply with EPA SEP Policy, it must be approved or receive a waiver by the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA.)
- If the SEP involves an international project, it must be approved by the Assistant Administrator for OECA.
- Where the SEP involves a project in the compliance promotion or "Other" categories described in the Guidelines above, it must be approved by the appropriate enforcement Division Director in the Office of Civil Enforcement. For cases involving Federal Facilities or Superfund, such projects must be approved in advance by the Director, Federal Facilities Enforcement Office or the Director, Office of Site Remediation Enforcement respectively.

As stated in the Guidelines above, the "Other" category includes Environmental Management Systems (EMS). EMS's for large businesses must receive prior approval from the Director, Special Litigation and Projects Division, Office of Civil Enforcement. EMS's for small businesses and State and local governmental entities do not require special approval.

Where special approvals or waivers are required, enforcement staff should contact the Headquarters SEP coordinators in the Special Litigation and Projects Division for assistance.

2. The enforcement settlement document should:

- accurately and thoroughly describe the “what, why, how, and when” of the SEP project;
- specify a dollar amount to be expended and include contingency language in the event that dollar amount is not spent;
- provide for a reliable and objective means to monitor and verify timely completion of the SEP project;
- define what constitutes “satisfactory” performance or completion of the SEP;
- describe the consequences for satisfactory and unsatisfactory performance of the SEP project;
- obtain information quantifying of the benefits of the project and how it was derived; and
- require a SEP project completion report with supporting documentation and certification (see Appendix 5 – SEP Completion Report and Certification Template) from an appropriate corporate official.

The appropriate SEP data entries into the Integrated Compliance Information System (ICIS) should be made within two weeks of issuing the final settlement document (e.g., consent decree entry). Known or anticipated outcomes (e.g., pollutant reductions, Environmental Justice, SEP type and value) should be entered into ICIS at this time.

All records pertaining to an EPA enforcement action are maintained in the enforcement file. For enforcement actions involving SEPs, this includes the following:

- negotiation team SEP memo;
- Regional Counsel SEP approval memo;
- special approvals (e.g., special approval memo from Assistant Administrator for OECA);
- SEP valuation documentation including PROJECT model printout, mitigation, and final penalty calculations; and
- all correspondence related to the performance of the SEP.

H. Procedures:

It is the goal of this guidance to optimize the use of SEPs. Many parties can be involved including regulated parties, affected communities, Department of Justice, and EPA Region 6 personnel. This guidance endeavors to facilitate the involvement of each party through the procedures outlined below.

Procedures for EPA Region 6 personnel:

1. Provide the regulated party a copy of EPA's SEP Policy, the Region 6 SEP Guidance and the SEP proposal format (See Appendix 4)
2. Encourage regulated party to research potential SEPS. Resources include State and Regional SEP libraries and EPA's SEP website
3. Consult with the appropriate State office
4. Coordinate with Office of Environmental Justice and Tribal Assistance (OEJTA) in facilitating and soliciting input from the affected community.
5. Discuss results of SEP research with the regulated party
6. Obtain and evaluate SEP proposal from the regulated party
7. Perform SEP valuation
8. Secure all necessary approvals (Section G)
9. Incorporate SEP into settlement document
10. Perform internal documentation (Section G)
11. Update ICIS and other applicable data bases
12. Coordinate with OEJTA on feedback, copies of documents, etc. to the affected community

Routing Procedure

1. When the negotiation team has reached a settlement in principle involving a SEP, the negotiation team shall E-mail the SEP memo and SEP approval memo to the Deputy Regional Counsel for Enforcement with copies to the Office of Regional Counsel (ORC) Water Practice Team Leader (currently coordinates SEPs for ORC) and the applicable Enforcement Branch Chief. If the SEP is novel in nature or may need special approval, the negotiation team shall discuss the SEP with the Deputy Regional Counsel before reaching an agreement in principle with the regulated party.
2. When the Consent Agreement and Final Order (CAFO) is circulated for concurrence, the concurrence package must contain the SEP memo.

Region 6 encourages regulated parties to:

1. Discuss SEP information provided by with Region 6 personnel
2. Research SEP libraries (EPA and State)
3. Solicit input from the affected community
4. Discuss results of SEP research with EPA Region 6
5. Submit SEP proposal in the Region 6 SEP format (see Appendix 4)

Region 6 encourages the involvement of affected communities in the SEP process particularly in the identification of SEP projects. One way to do this is by posting SEP ideas in the Region 6 SEP library on-line:

- Log on to www.epa.gov/region6/sep
- Click on the light bulb
- Fill out the SEP Idea Form
- Click on submit

To provide SEP ideas over the phone, contact Ms. Teresa Cooks at (214) 665-8145.

I. Training:

Each individual involved with the SEP process has a role in optimizing the SEP's utility. This begins with understanding and applying the SEP criteria, guidelines, and procedures properly. EPA Region 6 enforcement officers and attorneys should have training covering the following:

- Enforcement response policy
- Model enforcement documents
- SEP Policy and guidance
- Penalty calculations including BEN, ABLE, MUNIPAY, and PROJECT
- Records retention
- Confidential Business Information

To assist regulated parties in taking advantage of the SEP option, Information about SEPs must be forthcoming and the process must be straightforward. Accordingly, EPA Region 6 has posted relevant information to its SEP web site "epa.gov/region6/sep" including this and other relevant policies, a model SEP project proposal, frequently asked questions as well as the library of projects mentioned earlier.

At the outset of settlement discussions with a regulated party, Region 6 enforcement personnel will identify the SEP option and the accessibility the above SEP information.

J. Resources:

EPA's SEP Policy and guidance context supporting the Region 6 SEP Guidance can be viewed online at:

<http://cfpub.epa.gov/compliance/resources/policies/civil/seps/> including, but not limited to, the following:

- EPA Supplemental Environmental Projects Policy (5/1/98)
- Appropriate Penalty Mitigation Credit Under the SEP Policy (4/14/00)
- Interim Guidance for Community Involvement in Supplemental Environmental Projects (6/17/03)
- Guidance for Determining Whether a Project is Profitable and, When to Accept Profitable Projects as Supplemental Environmental Projects, and how to Value Such Projects (12/5/03)
- Guidance Concerning the Use of Third Parties and the Performance of SEPs and the Aggregation of SEP Funds (12/15/03)

Visit the Region 6 web site at www.epa.gov/region6 for specific EPA Region 6 priorities for protecting communities and the environment. Browse the individual media division web pages, the Region 6 Strategic Plan, and the Regional Administrators 300-Day Plan for excellent SEP project concepts. Region 6 also maintains an online library of ideas for SEP projects. Find it at www.epa.gov/region6/sep.

In addition, EPA's Enforcement and Compliance History On-Line (ECHO) database contains information on SEPs in concluded cases and is publicly available and easily searchable on a variety of fields such as Region, type of case, and SEP category. ECHO can be found at <http://www.epa.gov/echo/>

EPA also maintains a list of potential projects and SEP ideas. This list can be found at <http://cfpub.epa.gov/compliance/resources/policies/civil/seps/>.

Appendix 1
Minimum Penalty Work Sheet

STEP	AMOUNT
STEP 1. Calculate penalty without SEP	
1.a. economic benefit component	\$
1.b. gravity component	\$
1.c. penalty without SEP	\$
STEP 2. Determine minimum penalty constraints	
2.a. economic benefit component plus 10% gravity component	\$
2.b. 25% gravity component	\$
2.c. 60% MUNIPAY penalty (for municipal entities only)	\$
2.d. greater of 2.a., 2.b., or 2.c.	\$
STEP 3. Calculate SEP COST using PROJECT model	\$
STEP 4. Calculate SEP mitigation amount	
4.a. determine SEP mitigation percentage	%
4.b. calculate SEP mitigation amount = multiply SEP COST (STEP 3) by SEP mitigation %	\$
STEP 5. Determine minimum penalty	
5.a. subtract SEP mitigation amount (STEP 4.b.) from penalty without SEP (STEP 1.c)	\$
5.b. determine minimum penalty = greater of STEPS 2.d. or 5.a.	\$

Appendix 2

Example: Negotiation Team SEP Memo

Memorandum

Date:

Subject: Case Name

From: Attorney's Name
Enforcement Officer's Name

To: Enforcement File

The City of Makebelieve (Respondent) has agreed to settle the pending Clean Water Act case by paying a penalty of \$27,000 and implementing a SEP on which they will expend \$115,000. The SEP involves replacing septic tanks at 15 homes with city sewer line hookups. This will eliminate unauthorized releases into Swan Lake. The SEP complies with the criteria established in the EPA SEP Policy.

SEP Criteria

The Project Meets the Definition of a SEP

The proposed SEP is environmentally beneficial in that it will eliminate the use of private septic tanks. These private septic tanks have been a source of pollutants in the past since they tend to be old and in many cases have exceeded their design life. As a result, during heavy rains, there could be potential unauthorized releases of raw sewage from the septic tanks into drainage ditches and into the adjacent canals. The potential harm from these unauthorized releases has increased because the septic tanks are located near the groundwater table. The SEP will allow the Respondent to provide wastewater service and thus eliminate the need for the septic tanks.

The SEP Complies with the Legal Guidelines, Including the Nexus Requirement

The SEP is consistent with the Clean Water Act in that the project is designed to decrease water contamination.

The SEP furthers one of the goals of the Clean Water Act in that it seeks to maintain the chemical, physical, and biological integrity of the Nation's waters. There is adequate nexus in that the SEP reduces the overall risk to the local public health and the environment. In this case, the Respondent violated regulations resulting in pollutants being discharged into waters of the U.S. illegally. The SEP seeks to reduce pollutants

Appendix 2

Example: Negotiation Team SEP Memo (con't)

that are being discharged into waters of the U.S. in the same community where the violations occurred.

EPA will not play a role in managing or controlling funds that will be set aside for the performance of the SEP.

The scope of the SEP and the specified schedule for implementation are clearly defined in the Consent Decree.

The SEP is not being used to satisfy EPA's statutory obligation or another federal agency's obligation to perform a particular activity. The SEP does not provide EPA with additional resources to perform a particular activity for which Congress has specifically appropriated funds. The Consent Decree specifically states that federal funds may not be used to fund the SEP. The SEP does provide additional resources to support specific activities performed by EPA employees. Finally, the SEP does not provide a federal grantee with additional funds to perform a specific task identified within an assistance agreement.

Apart from the Consent Decree, the SEP is not otherwise legally required.

SEP Category

The SEP falls within one of the categories specified in the SEP Policy. Specifically, the SEP is a pollution prevention project in that it reduces the generation of pollution through source reduction. By eliminating the septic tanks, the source of the pollution is being eliminated.

Calculation of the Final Penalty

The settlement calls for the Respondent to pay a penalty of \$27,000 and to implement a SEP in the amount of \$115,000. Region 6 used the municipal settlement litigation consideration in this case because the Respondent is a municipality. The settlement amount using the municipal settlement litigation consideration was \$45,000. Because the Respondent will be implementing a SEP, and the penalty was calculated using the February 28, 1995 Revised Interim Clean Water Act Settlement Penalty Policy which allows the Region to mitigate the penalty up to 40% for implementing a SEP, the final penalty is \$27,000.

Appendix 2

Example Negotiation Team SEP Memo (con't)

Income Tax Deductions

Consideration of the Respondent's intent with regards to income tax deductions for SEPs is not applicable since the Respondent does not pay income tax.

Liability of Performance

The Consent Decree specifies that the Respondent or its successors are responsible and legally liable for ensuring that a SEP is completed satisfactorily.

Oversight and Drafting an Enforceable SEP

The Consent Decree accurately and completely describes the SEP and describes the specific actions to be performed by the Respondent. In order to verify, the Respondent must submit Progress Reports and a certified SEP Completion Report.

Failure of the SEP

The Consent Decree has increased penalty provisions in the event that the Respondent fails to comply with the terms of the SEP provisions.

EPA Procedures

Region 6 has the delegated authority to settle this case and is authorized to determine if the SEP should be approved or not.

Environmental Benefits

This SEP will reduce the water contamination due to leaks from septic tanks.

Community and Environmental Justice Benefits

The sewerage system hook ups will take place in the Yellow Brick Road (YBR) Subdivision which is considered an Environmental Justice community. The City met with the YBR Neighborhood Association to obtain input into the project and to identify the 15 homes to receive city sewerage service.

Documentation

Region 6 has included the documentation required by the SEP Policy in the enforcement file. An explanation of the SEP, including the PROJECT model printout is in the file. The five steps set forth in the SEP Policy used to determine the SEP valuation and final penalty have been followed. Therefore, the SEP conforms to the SEP Policy requirements.

Appendix 3
Example: Regional Counsel SEP Approval Memo

Memorandum

Date:

Subject: Case Name

From: Deputy Regional Counsel for Enforcement

To: Regional Counsel

The Supplemental Environmental Project (SEP) in this action, and the procedures followed by the Regional staff to design and document it, meet all applicable legal and policy requirements.

As the staff documentation in the file more fully explains, the City of Makebelieve violated Section 301 of the Clean Water Act by exceeding its effluent limitations. The City has agreed to settle this action by paying a penalty of \$27,000 and by performing a SEP.

As the SEP in this case, the City will replace septic tanks at 15 homes and hook them up to the City's sewage system. The City has agreed to spend approximately \$115,000 to complete this project.

This project falls under the "Pollution Prevention" category of SEPs and it clearly meets the nexus requirement of the SEP Policy. The SEP helps achieve the overall goal of the Clean Water Act by improving water quality in the area which was negatively impacted by the Respondent's violations by eliminating septic systems. The SEP is also being performed in the community affected by the violations. The Respondent is not required to perform the SEP by any other federal, state or local requirement. As such, the SEP meets the goals of the SEP Policy.

Accordingly, I recommend that you approve this settlement by concurring on the appropriate line below.

I concur with this settlement:

_____, _____
Regional Counsel date

I do not concur with this settlement:

_____, _____
Regional Counsel date

Appendix 4 SEP Proposal Format

SEP Project Proposal

Name and location of facility:

Project contact information:

Title; location (proximity to facility); and description of the project:

Select the applicable SEP categories:

- Public health
- Pollution prevention
- Pollution reduction
- Environmental restoration
- Pollution prevention, environmental quality, or compliance
assessment or audit
- Emergency planning and preparedness
- Environmental compliance promotion
- Other

Describe the expected environmental and/or public health benefits from the project:

Describe efforts to obtain the affected community's input to project:

Costs associated with the project:

- Facility tax status
- Capital expenditures (depreciable cash outlay)
- One time non-depreciable expenditures

Describe anticipated cost savings from the project:

Describe innovative aspects of the project:

- Technology
- Practices
- Procedures

Appendix 5

SEP Completion Report and Certification Template

The Settlement document should specify that the SEP Completion Report contains the following:

1. A detailed description of the SEP as implemented;
2. A description of any operating problems encountered and the solutions thereto;
3. Documented itemized costs of the SEP (e.g., by copies of purchase orders and receipts or canceled checks) and copies of monthly reports regarding labor costs, equipment costs, and materials purchased;
4. Certification that the SEP has been fully implemented pursuant to the provisions of the settlement document (e.g., Consent Agreement and Final Order);
5. Photographs of the SEP construction activities from initiation of the SEP to conclusion; and
6. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions if feasible).

The SEP Completion Report should also include the certification below signed by the appropriate official representing the regulated party.

“ I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”